

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

DOCKET NO. R97-1

MOTION TO COMPEL RESPONSES TO DBP/USPS INTERROGATORIES AND TO
ACCEPT LATE FILINGS IF NECESSARY

December 19, 1997

Respectfully submitted,

David B. Popkin

DAVID B. POPKIN, POST OFFICE BOX 528, ENGLEWOOD, NJ 07631-0528

1. On November 28, 1997, I mailed follow-up interrogatories to the United States Postal Service [DBP/USPS-103 through DBP/USPS-343]. These were received by the Commission on December 1, 1997 and on December 11, 1997, the Postal Service filed the Objection of United States Postal Service to Interrogatories of David B. Popkin Directed to the United States Postal Service [DBP/USPS-103 through 343] ["Objection"]. For the reasons stated below, I move to compel responses to these interrogatories.

2. Interrogatories DBP/USPS-103 through DBP/USPS-257 relate to the methods being utilized with respect to supporting the Postal Service's claim of high value for Return Receipt Service on accountable mail destined for delivery to recipients with a high volume of accountable mail.

3. In response to Interrogatories DFC/USPS-T40-16 through 18, Witness Plunkett indicated that, "I am not aware of any instances of this kind." in response to questions relating to the existing of any arrangements which allow for the completion of return receipts after the time of delivery. In response to my similar question in DBP/USPS-32 subpart a, Witness Plunkett responded, "This is the goal." In my oral cross examination of Witness Plunkett the following exchange took place [Testimony Volume 3 - page 992 line 19 to page 993 line 5]:,

Q. Okay, in other words, all accountable mail, regardless of whether it is a single letter sent to me or 10,000 of them sent to IRS, must meet the requirements of the Domestic Mail Manual where the addressee will sign both the delivery record and the return receipt if there is one, prior to gaining control of the mail?

A. In the case of the IRS, they would presumably use some kind of stamp but, otherwise --

Q. Sign in a permissible manner.

A. Otherwise, that's my understanding, yes.

Q. So you know of no exceptions, then?

A. I am not aware of any, no.

4. The denial by Witness Plunkett of any instances of improper delivery, coupled with the various letters [two of these letters were sent to me as a result of my efforts to obtain proper return receipts on my federal tax return sent to Holtsville, NY and my state tax return to Trenton, NJ] that Mr. Carlson attempted to introduce at the hearing, certainly should indicate the potential for large numbers of return receipts which are not being handled in accordance with the Postal Service's own regulations. Under Rule 25e, the witness would be required to file a supplementary response. My interrogatories will serve to satisfy this in part. I move to compel compliance with the requirement of Rule 25e.

5. The apparent conflict in Witness Plunkett's testimony must be resolved if the participants in this case are to have the ability to challenge the Postal Service's claim that the Return Receipt Service provides a high value to the mailer. Furthermore, if the record in this case is to be an accurate one, further exploration of this important point must be permitted and provided. Otherwise, the record will indicate that all accountable mail is being delivered in compliance with the regulations, when there is sufficient indication that it is not.

6. Special Rule 2E clearly applies to my requests. The Rule allows participants to obtain information (such as operating procedures or data) available only from the Postal Service. The requested data certainly fits into this criteria. Any Rulings which were made in previous cases should not be relevant since the Special Rules were made for this Docket and any changes which were felt to be appropriate should have

been incorporated. Participants should be aware of the requirements without having to research some 25 years of past cases. Rules which are very clear on their face, should be permitted to be relied on by a participant. This data requested in all of my interrogatories can only be provided by the Postal Service. They have objected to my attempting to obtain the information myself. They can't have it both ways. In oral cross-examination [Transcript 3 Page 658 lines 16-20], Postal Service counsel stated in response to providing information on box service, "No, I think -- I mean if it is under Rule 2-E, it might be the kind of question that would fit as information available only from the Postal Service, so we could take that."

7. In footnote 1 of the Objection, the Postal Service indicates that Rule 2E only applies when it is not addressed by the Postal Service's case. As noted above, the Postal Service's direct case apparently contained incorrect information. I would like to be prepared to have the information available for rebuttal of any testimony [this includes the likely testimony of Douglas F. Carlson with respect to his concerns about return receipts].

8. Footnote 6 of the Objection seems to indicate that a participant is prohibited from submitting testimony in a current case if, to the best of [Postal Service] counsel's knowledge, [that participant] has never filed any testimony in prior cases in which he has intervened. Which one of the Rules of Practice and Procedure or the Special Rules of Practice prohibit participants from providing their own testimony if they have not done so in all of their previous cases of intervention? It would appear to me that Postal Service counsel is attempting to intimidate me into not filing testimony in this case. My decision to submit my own testimony also must be balanced by the possibility that I would be inundated by Postal Service interrogatories. While the Postal Service objected to the number of my initial interrogatories [862 by my count] filed in September, they apparently had no concern when they apparently asked nearly 900 interrogatories to the CAUUC in Docket No. MC97-5.

9. On page 2 of the Objection, the Postal Service indicates that I had the opportunity to cross examine witness Sharkey through questions provided to the OCA. Observation of numerous incidents on pages 2123 through 2135 of Volume 4 indicates that the witness could not answer these questions with certainty and would provide answers in writing. These written responses have yet to be provided in spite of previous motions to compel filed by me.

10. These interrogatories are not related to a forum for general oversight of Postal Service operating practices. Both the Return Receipt and Express Mail interrogatories relate very much to the service being provided. The Postal Service cannot claim that they are providing a high level of service and have the Commission believe that in spite of any attempts to show that it is not correct.

11. Express Mail service provides a high speed, high reliability service. My interrogatories are attempting to show that the promised level of service does not exist and that mailers are being provided information as to the available level of service which the Postal Service will be unable to meet. Interrogatories DBP/USPS-258 through 343 are not operational but completely related to the level of service.

12. Interrogatories 96 subpart a and 98 have not been responded to by the Postal Service. Postal Service counsel stated on December 8, 1997, "Objections to DBP/USPS-96(a) and 98 were filed today." I have not received a copy of these objections and they do not appear on the PRC Daily Listing of Documents Received. I wish I could make by pleadings as easy as just stating that I made them. The time for filing objections has past.

13. I move to compel a response to the specific question asked in DBP/USPS-19 subpart a. The information that I requested was the total revenue and expense amounts for philatelic products over the past ten years. I was provided with a Library Reference H-314 [I was taken aback when I actually was provided with the reference

rather than just filing it and forcing me to come to Washington to see it. The Postal Service may have been hard pressed to utilize a Library Reference to provide twenty numbers.] This reference does not provide the requested information, namely, the revenue and expense for each of the ten years. I am hard pressed to believe that this information is not available by asking Mr. Azeezaly Jaffer, Executive Director, Stamp Services USPS or some other USPS employee. I move to compel response to my specific question.

14. As part of my original interrogatories file back in September, the Postal Service has yet to file a response to DBP/USPS-69 through 71. I have filed Motions to Compel and the Postal Service has promised an expeditious response. It's now three months and several motions later. It would appear to me to be a willful failure to comply with the Rules of Practice. I again move to compel a response by a specific Commission ordered date.

15. For the reasons stated above, I move to compel responses to the referenced interrogatories.

16. To the extent that any extension of time is necessary for acceptance of this pleading, I so move based on, among other things, my operational requirements and delays in obtaining Postal Service filings.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

David B. Popkin


December 19, 1997